IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.74 of 1995

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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KASHIRAM TEXTILE MILLS (P) LTD - Applicant(s)
Versus
COMMISSIONER OF INCOME TAX - Respondent(s)

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Appearance :
MR MANISH J SHAH for Applicant(s) : 1,
MR MANISH R BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 22/12/2005
ORAL JUDGMENT
(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench “C”, has referred the following two questions under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of the

assessee:

1. “Whether, on the facts and circumstances of the case the Income-tax Appellate Tribunal was justified in holding that the assessment order passed by the Income-tax Officer is not barred by limitation ?”

2. “Whether, on the facts and circumstances of the case the Income-tax Appellate Tribunal was justified in holding that interest payment Rs.3,12,488/- to Income Tax Department under Section 215, u/s 216 and u/s 220(2) of the Act are not allowable deduction either under section 28 or section 36 or section 37 or section 80 V of the Act ?”

2. The Assessment Year is 1981-82 and the corresponding accounting period is the year ended on 30th September, 1980.

3. Heard Mr.M.J.Shah, learned advocate for the applicant-assessee and Mr.M.R.Bhatt, learned Senior Standing Counsel on behalf of the respondent-assessee.

4. It is common ground between the parties that the questions referred stand concluded by decisions of this Court and hence, it is not necessary to set out the facts and contentions in detail.

5. In so far as question No.1 is concerned, Mr.Shah has fairly drawn attention to the decision of this Court rendered in case of Commissioner of Income-tax Vs. Shree Digvijay Woollen Mills Ltd., [1995] 212 ITR 310 (Guj.), and submitted that the issue involved stands concluded in favour of the Revenue and against the assessee. In the circumstances, it is held that the Tribunal was justified in holding that the assessment order passed by the Income Tax Officer is not barred by limitation. The question is, accordingly, answered in the affirmative i.e. in favour of the Revenue and against the assessee.

6. In so far as question No.2 is concerned, Mr.Shah has very fairly drawn attention to the decision of this Court rendered in the case of Saurashtra Cement and Chemical Industries Ltd. Vs. Commissioner of Income-tax, [1995] 213 ITR 523 (Guj.), and submitted that the controversy in issue stands concluded in favour of the Revenue and against the assessee.

7. Applying the principles laid down in the aforesaid decision, it is held that the Tribunal was justified in holding that interest payment of Rs.3,12,488/- to the Income Tax Department under Sections 215, 216 and 220(2) of the Act are not allowable deduction either under Sections 28 or 36 or 37 or Section 80 V of the Act. The question referred is answered in the affirmative i.e. in favour of the Revenue and against the assessee.

8. The reference stands disposed of accordingly, with no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**